Supreme Court, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1979

No. 79-1613

COMMONWEALTH OF PENNSYLVANIA,
Respondent,

v.

EDWARD E. HUFFNAGLE,
Petitioner

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

TO THE HONORABLE, THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Petitioner, EDWARD E. HUFFNAGLE, by his attorney, ALAN ELLIS, ESQUIRE, respectfully prays that a Writ of Certiorari issue to review the Order of the Supreme Court of Pennsylvania entered in this proceeding on January 16, 1980.

OPINIONS BELOW

Commonwealth v. Huffnagle, —— Pa. Super. ——, —— A.2d. ——, (1980) (Not Yet Reported).

STATEMENT OF JURISDICTION

1. The Order of the Supreme Court of Pennsylvania was filed on January 16, 1980, and this Petition for Certiorari was filed within ninety (90) days of that date.

2. The jurisdiction of this Honorable Court is invoked under 27 U.S.C. §1257(3).

QUESTIONS PRESENTED FOR REVIEW

(1) Did police officers' entry into petitioner's motel room violate standards of the Fourth and Fourteenth Amendment where they knocked and announced their identity, but not their purpose, and then waited only two seconds before making a warrantless forcible entry into petitioner's motel room in order to arrest him and seize contraband and fruits of criminal activity?

(2) Should the police first have obtained an arrest warrant for the petitioner and/or a search warrant for the motel room prior to their entry in order to arrest petitioner and seize contraband and fruits of criminal activity?

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

United States Constitution, Amendment 4:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

United States Constitution, Amendment 14:

". . . nor shall any State deprive any person of life, liberty, or property, without due process of law."

STATEMENT OF THE CASE

This is a criminal case in which Petitioner was found guilty, following a non-jury trial, of delivery of a controlled substance, to wit, marijuana, and sentenced to undergo imprisonment in a State Correctional Institution for not less than one and three-quarters (1¾) years nor more than five (5) years, fined Three Thousand ($3,000.00) Dollars and ordered to make restitution in the amount of Two Thousand, One Hundred Eight ($2,108.00) Dollars.

Prior to trial, Petitioner timely filed a pre-trial motion to suppress evidence, which, after hearing, was denied by the Trial Court. (See Appendix "A"). The denial of Petitioner's motion to suppress forms the basis of the within Petition.

The relevant facts can be briefly summarized as follows:

On August 4, 1977, at 12 midnight, without benefit of an arrest warrant or search warrant, Investigator Glenn Hollier of the Bureau of Drug Control of the Department of Justice of the Commonwealth of Pennsylvania, made a forcible entry into Room 6 of the Crown Motel in Lewistown which was occupied by the defendant "to arrest defendant and seize contraband and fruits of the criminal activity incident thereto." Prior to entry Agent Daniel O. Licklider, who had previously been in the room in an undercover capacity, yelled "It's Danny. Open up!" Hearing no response, Investigator Hollier immediately knocked on the closed, but unlocked, door and, again, got no response. Agent Hollier then waited "two seconds" knocked again, shouted "State Narcotics" and "went through the door." Once inside the room, the agents were greatly surprised to find no one therein but discovered approximately 47 pounds of alleged marijuana. At all times relevant hereto, the agents were *not* in uniform; were using *un*marked vehicles; and did not have their guns drawn. Finally, as early as 12 noon on the date in question, the Bureau of Drug Control was on

notice that defendant possessed 47 pounds of marijuana in this motel room inasmuch as Frank Lancon, a confidential informant working on behalf of the Bureau of Drug Control, had been in said room with the defendant and had personally observed the marijuana. At 7 p.m. that evening, informant Lancon told agent Licklider that he had observed the marijuana and at 10 p.m. told him of its exact location.

ARGUMENT
AMPLIFYING THE REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT

The police officers' entry into Petitioner's motel room violated standards of the Fourth and Fourteenth Amendments where they knocked and announced their identity, but not their purpose, and then waited only two seconds before making a forcible entry into Petitioner's motel room in order to arrest him, seize contraband and fruits of criminal activity. By refusing to suppress the entry obtained as a result of this illegal search and seizure, the Pennsylvania Court's have refused to recognize relevant and applicable decisions of Your Honorable Court with respect to reasonable searches and seizures. *Ker v. California*, 374 U.S. 23 (1963); *Miller v. United States*, 357 U.S. 301 (1958); *Sabbath v. United States*, 391 U.S. 585 (1968).

By holding that there was no need for the police to obtain an arrest or search warrant before making the forcible entry in this case, the Pennsylvania Courts have refused to recognize relevant and applicable decisions of Your Honorable Court with respect to the warrant requirements of the Fourth Amendment as made applicable to the States by the Fourteenth Amendment. *U.S. v. Watson*, 423 U.S. 411 (1976); *Warden v. Hayden*, 387 U.S. 294 (1967); The Fourth Amendment to the United States Constitution is designed to protect persons from unreasonable searches and seizures, thereby protecting their privacy. It mandates, as a general rule, that a search warrant must be obtained before a search of a person or his property can be lawfully made by the enforcement officer. See *Ker v. California, supra; Katz v. U.S.*, 389 U.S. 347 (1967).

CONCLUSION

WHEREFORE, for the foregoing reasons, it is respectfully urged that your Honorable Court grant this Petition.

Respectfully submitted,

ALAN ELLIS
Attorney for Petitioner

APPENDIX A

IN THE
COURT OF COMMON PLEAS OF
MIFFLIN COUNTY, PENNSYLVANIA

COMMONWEALTH	: CRIMINAL ACTION NO. 220 OF 1977
vs.	: Charge: Drug Violation.
EDWARD HUFFNAGLE	:

ADJUDICATION

NOW, January 25, 1978,[1] after hearing of December 29, 1977, the Court makes the following Factual Findings:

On August 4, 1977, undercover narcotics agent arranged through informant to purchase drugs from Defendant. Proposed transaction was to involve some three thousand (3000) "ups", forty-seven (47) pounds of marihuana and two thousand ($2,000.00) dollars currency. Informant had talked to Defendant concerning deal, seen marihuana and acquired sample of same at Room 6 of Crown Motel that morning. Informant delivered sample to agent in Allentown early that evening. Agent and Informant traveled to Lewistown and met Defendant in parking lot of Holiday Inn at approximately ten o'clock that night. Defendant insisted that third party (informant) hold money until completion of transaction. Agent followed Defendant by vehicle to Defendant's residence to acquire "ups". Agent then followed Defendant by vehicle to Crown Motel to acquire marihuana. At some point between ten o'clock and eleven thirty Agent learned that marihuana was at Motel, but Agent was unfamiliar with area and did now know location of Motel. Departure from residence for Motel was at approxi-

1. Assisted by John K. Mort, Esquire, Law Clerk.

mately eleven thirty. Defendant produced key for Room 6. Under a bed in room were four large plastic litter bags. Agent examined contents of at least one bag and ascertained contents to be marihuana. Room had two beds, closet and bathroom. Defendant suggested that all should leave and that Agent should return later with key for marihuana when no one was around. Agent refused and, after peering out window, turned to see wad of currency pass from Informant to Defendant. Agent left room after announcing purpose to procure scales from trunk to weigh marihuana. Raised trunk lid was signal for second agent and officers positioned nearby to rush to scene to make arrest. Agent also made radio contact with officers, relating location of marihuana in room and directing that arrest be made. While on radio, Agent noticed someone peer out of window of Room 6. Within two or three minutes of Agent's exit from room, six officers arrived in three cars and parked in front of room blocking driveway exits. Cars were unmarked and most officers were not in uniform. Second Agent, not in uniform, knocked on motel door. First Agent called out "It's Danny, open up." Agent knocked again, and hollered "state narcotics." Time span between knocks was a "couple seconds." Upon receiving no response, second Agent opened unlocked but closed door and entered room. Neither Defendant nor Informant was in room but had fled through rear exit. Not knowing of rear exit Agents expected to find room occupied. Marihuana was found under bed and lying on and around bed. Defendant surrendered to authorities the following morning. Raid occurred at approximately midnight. Agents had neither arrest nor search warrant.

DISCUSSION

In support of Motion To Suppress Defendant asserts that entry into motel room to arrest and recover money and contraband without arrest or search warrant violated rights protected by Fourth Amendment. Defendant

specifically argues violation of so called "knock and announce" rule. Said rule requires that before officers enter upon private premises to search or arrest they must announce their identity and purpose. Rule also demands that officers allow sufficient time for occupants to surrender premises voluntarily before making entry. See *Commonwealth v. DeMichel*, 442 Pa. 553, 277 A.2d 159 (1971). However, existence of exigent circumstances can justify noncompliance with requirements of rule in appropriate situations. *Commonwealth v. Newman*, 429 Pa. 441, 240 A.2d 795 (1968); *Commonwealth v. Johnson*, 223 Pa. Super. 83, 289 A.2d 733 (1972). Defendant claims that failure of officers to announce their purpose and failure to allow sufficient time for premises to be surrendered voluntarily renders evidence obtained as result of such entry inadmissible. Commonwealth counters that entry was proper on this set of facts and in light of all attendant exigencies and circumstances.

In assessing constitutional validity of entry here, we must examine all circumstances surrounding incident. *Commonwealth v. Pugh*, 223 Pa. Super. 112, 296 A.2d 864 (1972). If compliance with requirements of "knock and announce" rule would constitute a useless gesture, failure to comply is reasonable and excused. *Commonwealth v. Johnson*, Supra; *Commonwealth v. McAleese*, 214 Pa. Super. 228, 252 A.2d 380 (1969); *Commonwealth v. Easton*, 231 Pa. Super. 398, 332 A.2d 448 (1975). We believe that several factors existed here to warrant justification for manner of entry employed by agents. Initially here there was a relatively large scale felonious drug transaction. 35 P.S. 780-113(a)(30). Transaction was consummated only minutes before entry. Defendant was in motel room with forty-seven pounds of marihuana and two thousand dollars currency which he had just received from agent when several cars pulled into motel driveway, then were knocks at door and agent called out "state narcotics." Under these circumstances we believe it would be both unreasonable and unrealistic

to conclude that failure of agents to announce their obvious purpose constituted violation of Defendant's Fourth Amendment rights and the "knock and announce" rule. To conclude here that Defendant did not know purpose of narcotics agents' presence and that announcement of that purpose would not have been a useless gesture would be to impute to Defendant, or anyone in similar situation, unwarranted naiveté.[2] Additionally, while the time elapsed between first knock and entry was quite short we believe it would have been sufficient to allow voluntary surrender of these particular premises. This case involves a motel room with closet and bath. We do not deal here with multi-story or multi-room dwelling. Agents knew (or thought) that Defendant was in motel room. We do not deal here with situation involving officers unaware of presence or location of occupants in dwelling or whether they are awake or asleep. See *Commonwealth v. Clemson*, 338 A.2d 649, 234 Pa. Super. 191 (1975) (dissenting opinion of Price, J., joined by two other judges). While occupants of motel room were not given long period of time to answer knocks or surrender premises and permit agents' entry, circumstances did not warrant long delay at door. Had Defendant desired to allow entry to room, he could have done so within short time; therefore, agents were justified in so concluding and making entry in manner that they did when premises were not surrendered.

Despite the foregoing Defendant also contends that agents should have obtained arrest and/or search warrant before entering premises[3] to effect arrest and sei-

2. While agents and some officers involved in this matter were not in uniform, we do not believe this, in and of itself, requires a finding that requirements of "knock and announce" rule had been violated.

3. As Defendant correctly notes, motel room is within ambit of Fourth Amendment protections. *United States v. Jeffers*, 342 U.S. 48, 72 S. Ct. 93 (1951); *United States v. Chadwick*, 97 S. Ct. 2476 (U.S. 1977).

zure of contraband. Commonwealth counters that warrantless entry and seizure was proper here. Agents contemplated from outset that operation of August 4, 1977, would be a "buy-bust" transaction. Upon sale to undercover agent, Defendant would be arrested immediately, contraband would be seized incident to arrest and money would be retrieved before lost. Flight of Defendant through rear door of motel room, which was unknown to agents until their entry into room, prevented neat disposition of transaction as contemplated. Defendant's specific contentions are that as no arrest of Defendant occurred in motel room seizure of contraband cannot be justified as incident to valid arrest, that warrantless entry to arrest and warrantless seizure of contraband were improper in that adequate time existed during which warrant(s) should have been obtained as no exigencies existed justifying warrantless action, and that arrest inside private premises requires arrest warrant.

The troublesome question of whether and under what circumstances an officer may enter a private place without a warrant to effect a warrantless arrest has not yet been delineated and resolved by the Supreme Court. See *United States v. Watson*, 96 S. Ct. 820 (U.S. 1976); *United States v. Santana*, 96 S. Ct. 2406 (U.S. 1976). However, as the Court has stated recently, per Chief Justice Burger, the "fundamental inquiry in considering Fourth Amendment issues is whether or not a search or seizure is reasonable under all the circumstances." *United States v. Chadwick*, 97 S. Ct. 2476, 2482 (U.S. 1977). While warrants are favored by the law and are to be accorded preference, the present case presents a blending of numerous factors sufficient to warrant finding that police action here was reasonable and justified. In addition to the following portion of this Discussion, those factors, exigencies and considerations which rendered entry valid and were discussed earlier are applicable here to serve to obviate need for warrant in the situation at bar.

Agents did not obtain warrant although informant arranging transaction had seen marihuana at Motel approximately ten hours prior to completion of sale. While warrant for premises could have been secured after informant's initial ascertainment of location of marihuana, agents could have reasonably harbored serious doubt with respect to location of marihuana ten or twelve hours later at time of actual "buy." Movement of marihuana after initial display to prospective buyer or buyer's agent and before sale would be shrewd and prudent tactic on part of seller of large quantity of contraband to promote private and safe completion of sale. In order to eliminate possibility of depending on warrant invalidated by probable movement of sought contraband and to insure strongest case, agents contemplated making "buy" and arresting Defendant immediately thereafter. As Defendant concedes, warrantless arrest for commission of felony in presence of officer is proper. When agents learned location of marihuana one or two hours before actual sale their decision to proceed as planned with "buy-bust" operation was not unreasonable. At point when commission of felony was imminent and when arrest and seizure could be validly effected, agents' continuation with progressing transaction was justifiable. In all probability, at this point warrantless arrest and incidental seizure were close at hand and apt to occur before warrant could be obtained at that late hour. See *United States v. Santana*, Supra at 2410 (concurring opinion of Stevens and Stewart, JJ.).

After completion of sale, undercover agent exited room to summon supporting officers to assist in making arrest. At this point in the transaction officers were confronted with situation presenting sufficient exigencies and facets of "hot pursuit" exception to warrant requirement. A felony had occurred two or three minutes earlier in presence of one of agents. The greatest abundance of probable cause existed to believe that perpetrator of felony, contraband and marked money were inside room.

Confronted with such a situation we cannot conclude entry to arrest was improper. See *Commonwealth v. Montgomery*, 371 A.2d 885 (Pa. Super. 1977); *Warden v. Hayden*, 387 U.S. 294, 87 S. Ct. 1642 (1967). Given this strongest probable cause as to commission of felony and location of Defendant and contraband, delay in further "pursuit"[4] of Defendant while warrant was obtained was not required. Probable cause should if possible be determined by neutral and detached Magistrate and not police actively engaged in law enforcement operations. However, where there exists such strong probable cause, as here, and where warrantless arrest and search incident would be proper, failure to obtain warrant was a justifiable and harmless decision. *United States v. Santana*, Supra at 2410. Purposes served by warrant requirement were satisfied at this point in transaction due to attending circumstances and facts within knowledge of agents through personal observations by agent "buyer" of felony commission and contraband. *Cf. United States v. Chadwick*, Supra at 2488-89.

Similarly, Defendant's argument that arrest within private premises was improper without warrant (see, e.g. *Dorman v. United States*, 435 F.2d 385 (D.C. Cir. 1970))) ignores the fact that agents were imminently close on trail of felon, both in space and time. Additionally, agent inside room in undercover capacity had witnessed felony commission and contraband. As arrest and seizure incident to arrest would have been justified at that moment, agent's exit to summon support and return within two or three minutes was essentially equivalent to making arrest two or three minutes earlier. To conclude otherwise would unduly eviscerate established doctrine permitting warrantless arrest upon probable cause for commission of felony and deny officer with

4. While "hot pursuit" denotes some sort of a chase or pursuit, "it need not be an extended hue and cry 'in and about the public streets.' " Neither does the pursuit need be of any particular or extended duration. *United States v. Santana*, Supra at 2409.

probable cause the right to summon aid and support before acting.

Defendant's argument that contraband could not be seized validly as incident to arrest in that it was neither in plain view nor within Defendant's "immediate control area" (*Chimel v. California*, 395 U.S. 752, 89 S. Ct. 2034 ((1969))) is refuted by testimony of agents that marihuana was not only under bed but on and about bed at time of actual sale and minutes later upon entry of agents into motel room.

Accordingly, we conclude and find that warrantless entry into motel room for purpose of effecting arrest for felony committed in presence of one of agents making entry was reasonable in light of attending circumstances and that seizure of contraband in room was similarly proper. Therefore, Defendant's Motion To Suppress must be denied.

ORDER

NOW, January 25, 1978, after hearing of December 29, 1977, Defendant's Motion To Suppress is denied. The record is impounded in accordance with Pa. R. Crim. P. 323(g) and the nature and purpose of the hearing and order shall not be disclosed by anyone to anyone except to the Defendant and Counsel for the parties. This Order and foregoing Adjudication are written in confirmation of oral ruling made of record on January 3, 1978.

BY THE COURT,

R. L. Ziegler

P.J.

APPENDIX B

J. 48/79

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	Harrisburg District
EDWARD HUFFNAGLE, Appellant	:	No. 180 March Term 1978

Appeal from Judgment of Sentence imposed by the Court of Common Pleas of Mifflin County, at No. 220 of 1977.

PANEL CASE August 30, 1979

BEFORE: SPAETH, HESTER and MONTGOMERY, JJ:

MEMORANDUM OPINION:

We agree with the lower court's disposition of the issues in this case. With respect to whether the Commonwealth had the burden of proving beyond a reasonable doubt that appellant was not registered or licensed to dispense marijuana, 35 P.S. 780-113(a)(30), we note that the recently decided *Commonwealth v. Sojourne* —— Pa. Superior Ct. ——, —— A.2d —— (J. 1284/78, filed June 22, 1979), holds that before such proof is necessary, the defendant must come forward with "some credible evidence of authorization." Slip op. at 12. Here, appellant did not come forward with any evidence of authorization, and therefore the Commonwealth did not have the burden of proving non-registration or non-li-

censure. We also note that even so, Agent Licklider testified that "nobody is licensed in the state of Pennsylvania to dispense marihuana." Record at 78a.

Affirmed.

APPENDIX C

November 26, 1979

Alan Ellis, Esquire
111 Sowers Street
Suite 600
State College, Pa. 16801

Re: Huffnagle, Petitioner v. Com.
No. 497 Allocatur Docket

Dear Mr. Ellis:

This is to advise that the following Order has been endorsed on the Petition for Allowance of Appeal in the above-captioned matter:

"November 19, 1979
PETITION DENIED
s/ PER CURIAM."

Very truly yours,

Mildred E. Williamson

MILDRED E. WILLIAMSON
Deputy Prothonotary

cc: Richard M. Mohler, Esquire

APPENDIX D

January 21, 1980

Alan Ellis, Esquire
111 Sowers Street, Suite 600
State College, Pa. 16801

Re: Huffnagle, Petitioner v. Com.
No. 497 Allocatur Docket

Dear Mr. Ellis:

This is to advise that the following Order has been endorsed on the Petition for Reargument in the above-captioned matter:

"January 16, 1980
PETITION DENIED
s/ PER CURIAM."

Very truly yours,

Mildred E. Williamson

MILDRED E. WILLIAMSON
Deputy Prothonotary

MEW/sb
cc: Richard M. Mohler, Esquire